

IT 95-15  
Tax Type: INCOME TAX  
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS         )  
                           )  
      v.                   )   Docket:  
                           )  
XXXXXX                    )  
                           )   Hollis D. Worm  
                           )   Administrative Law Judge  
Taxpayers(s)              )  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely Protest by XXXXX (hereinafter referred to as the "taxpayers") to a Notice of Partial Refund (hereinafter referred to as the "Notice") issued to them on January 22, 1991. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayers incorrectly computed the Federal Net Operating Loss (hereinafter referred to as the ("F.N.O.L.") for Illinois purposes.

In their Protest to the Notice, these taxpayers stated that they did not agree with the Department's utilization of the F.N.O.L. for Illinois purposes. They also did not request a formal hearing in this matter. Therefore, the following issue is being heard on the information provided by the taxpayers in their Protest and on the Notice of Partial Refund: 1) whether the Department correctly recomputed the F.N.O.L. for Illinois purposes?

Following a review of the documentation, it is recommended that this matter be resolved in favor of the Department of Revenue.

#### FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Partial Denial which indicates that the taxpayers incorrectly computed their F.N.O.L. for Illinois purposes for the 1986, 1987 and 1988 taxable years.

2. The taxpayers filed claims for refund for the 1986, 1987 and 1988 taxable years based upon F.N.O.L.s for the 1990 and 1991 taxable years.

3. The Department approved these claims in part for the 1986, 1987 and 1988 taxable years.

4. The taxpayers filed a timely protest to the Notice, and did not request a formal hearing.

5. The taxpayers failed to demonstrate that the Department incorrectly recomputed the F.N.O.L. for Illinois purposes.

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/203 et seq. imposes Illinois income tax liability on a taxpayer's "net income". Net income is defined as "base income" less certain amounts not relevant to this matter. For an individual, base income is the taxpayer's federal adjusted gross income (hereinafter referred to as "Federal AGI") subject to specifically enumerated addition and subtraction modifications. 35 ILCS 5/203(a).

The Department partially approved the taxpayers' claims for refund for the 1986, 1987 and 1988 taxable years, in part by correcting line 1 of their claims to reflect the proper amount of F.N.O.L. to be carried back for Illinois purposes. For Illinois purposes, a F.N.O.L. is allowable only to the extent that Federal AGI is affected. Federal adjustments that would create, increase or decrease a loss are necessarily disregarded because of the statutory definition of base income. 35 ILCS 5/203(a).

In their letter of Protest, the taxpayers did not request a formal hearing. 35 ILCS 980(a) Therefore, the rebuttal to the Department's prima

facie case in this cause is found in the taxpayers' representations as found in their written Protest.

The taxpayers' assertion that they do not agree with the Department's utilization of the F.N.O.L. for Illinois purposes, without providing any legal authority, is not sufficient to overcome the prima facie correctness of the Department's Notice of Partial Denial. The Notice of Partial Denial is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.ed 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist.1978). The taxpayers have failed to meet that burden in this case.

A taxpayer cannot overcome the Department's prima facie case merely by denying the accuracy of its assessments. *Smith v. Department of Revenue*, 143 Ill.App.3d 607 (5th Dist.1986); *Puelo v. Department of Revenue*, 117 Ill.App.3d 260 (4th Dist.1983). In the case at issue, the taxpayers' challenge was unaccompanied by any documentary support. Accordingly, the taxpayers failed to overcome the Department's prima facie case.

Hollis D. Worm  
Administrative Law Judge

March 31, 1995